

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8506 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NIRANJANABEN RASHMIKNAT PATHAK

Versus

COMPETENT AUTHORITY

Appearance:

MR BS PATEL for Petitioners

SERVED BY DS for Respondent No. 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/12/96

ORAL JUDGEMENT

Heard learned advocates for the parties. The petitioner is one of the heirs of late Sankaleshwar Ranchhodbhai Trivedi who owned several pieces of land in Manjalpur of Vadodara Urban Agglomeration. Upon declaration made by the widow of said Sankaleshwar, she was held to be entitled to hold 1 unit of land admeasuring 1500 sq. mtrs. and rest of the land

admeasuring 7637 sq.mtrs. was held to be excess land. Feeling aggrieved, the heirs of late Sankaleshwar Trivedi including the present petitioner preferred an appeal before the Tribunal. Pending appeal, the appellants preferred an application for revision under section 34 of the Urban Land (Ceiling & Regulation) Act, 1976 [hereinafter referred to as "the Act"] and withdrew the said appeal. Revision application made by the said appellants was allowed by the Government. The Government held that all the heirs of late Sankaleshwar including daughters were entitled to hold one unit of land and, thus, declared that 1227 sq.mtrs. of land was excess land in the hands of the said appellants. The Government further directed the competent authority to proceed further and to give to the applicants an opportunity of selection and option of the lands to be retained by them. Accordingly, notices were issued to all the applicants and all the applicants remained present through their constituted attorney who made selection of the lands to be retained by the said applicants. Said procedure having been completed, one of the applicants i.e. the petitioner herein has preferred appeal before the Tribunal and raised the contention that high tension electric wire passes over a piece of land selected by the constituted attorney of the petitioner and that the said land could not have been constructed upon and, therefore, was required to be excluded from the holding of the petitioner and the other heirs of late Sankaleshwar. She further contended that she had not been given proper opportunity for selecting the lands to be retained by her. The contention was considered by the Tribunal. The Tribunal held that the appellant had given power to the constituted attorney and the selection was made by the constituted attorney. That the appellant had no locus standi to prefer appeal and in view of the revision application allowed by the Government, the appeal was not maintainable.

2. Feeling aggrieved by the order of the Tribunal, the petitioner has preferred this petition. Mr. Patel has appeared for the petitioner and has contended that the petitioner's contention regarding exclusion of land over which high tension electric wire passed has not been properly considered. He has referred to one unreported judgment of this Court rendered in Special Civil Application NO. 752 of 1981 and has submitted that the Court had held that the lands over which high tension electric line passes cannot be included in the holding. He has further contended that the said lands were agricultural lands and were being utilised for agricultural purposes on the date of the commencement of

the Act. The agricultural exemption was also given to the declarants which was later on withdrawn on the application made by the declarants in the year 1987. Mr. Patel has submitted that since on the date of commencement of the Act, said lands were being used for agricultural purposes, same could not have been included in the holding of the declarants. In support of his case, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Smt. Atia Mohammadi Begum v. State of UP & Ors [AIR 1993 SC pg. 2465]. In the matter before the Supreme Court, the Court was considering the definition of 'vacant land' provided in the Act and the effect of the development plan made after the commencement of the Act. In the present case, it is not disputed that the lands are situated within the urban agglomeration and the declarants have ceased to carry on the agricultural operations on the said lands. In my view, the question of development plan does not arise and the judgment rendered by the Hon'ble Supreme Court would not be attracted. Besides these issues have never been raised either before the competent authority or before the revisional authority. This contention has been raised for the first time in this petition and cannot be entertained. The Tribunal has rightly rejected the appeal. The order made by the Tribunal does not warrant any interference. The petition is, therefore, summarily dismissed. Notice is discharged. Ad-interim order made earlier stands vacated. There shall be no order as to costs.